

SERVED: September 13, 2002

NTSB Order No. EA-4994

UNITED STATES OF AMERICA  
**NATIONAL TRANSPORTATION SAFETY BOARD**  
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD  
at its office in Washington, D.C.  
on the 11th day of September, 2002

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|----------------------------------|---|-----------------|
| _____                            | ) |                 |
| MONTE R. BELGER,                 | ) |                 |
| Acting Administrator,            | ) |                 |
| Federal Aviation Administration, | ) |                 |
|                                  | ) |                 |
| Complainant,                     | ) |                 |
|                                  | ) | Docket SE-16452 |
| v.                               | ) |                 |
|                                  | ) |                 |
| GARY MICHAEL WEDDING,            | ) |                 |
|                                  | ) |                 |
| Respondent.                      | ) |                 |
| _____                            | ) |                 |

**OPINION AND ORDER**

The Administrator has appealed from the oral initial decision of Administrative Law Judge William R. Mullins, issued on March 6, 2002, following an evidentiary hearing.<sup>1</sup> The law judge dismissed an emergency revocation order of the Administrator, finding that the Administrator had failed to meet her burden of proving that respondent had violated 14 C.F.R. §§

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<sup>1</sup> The initial decision, an excerpt from the transcript, is attached.

43.12(a)(1) and (3) of the Federal Aviation Regulations (FARs), 14 C.F.R. Part 43.<sup>2</sup> We grant the Administrator's appeal and affirm the emergency order of revocation.<sup>3</sup>

Respondent was hired to install new global positioning satellite (GPS) equipment in a Beech Model V-35B. When the aircraft was returned to the owners, they were provided a (required) Form 337, Major Repair and Alteration, to keep in the aircraft. FAA approval and signature on the form in section 3 is required, as is inspection and approval for return to service by someone with inspection authority (IA). No flight manual supplement to accompany the GPS system was provided. A few months later, the owners were told by the FAA that the GPS system respondent installed was not new, and that the FAA approval on the paperwork (the Form 337 and the aircraft log) might not be authentic. After an investigation, respondent was charged by the Administrator with intentionally falsifying both.

The Administrator's main witnesses were a forensic documents examiner and the FAA inspector whose signature was on the form. As is discussed in more detail below, the expert witness testified that the Form 337 (Exhibit C-2) had been forged. This

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<sup>2</sup> Section 43.12(a)(1), as charged here, prohibits intentionally false entries in any record or report that is required to be made, kept, or used to show compliance with any requirement under Part 43. Section (a)(3) prohibits altering records for fraudulent purposes. Respondent waived the emergency timetable for handling his appeal from the Administrator's order.

<sup>3</sup> We grant the Administrator's motion to strike. Respondent offers no basis for consideration of new evidence. Deposition testimony and other discovery material are not part of the record (continued...)

witness went through in detail the various indicia of the forgery, and how the features of the document were inconsistent with respondent's version of events: that he had faxed the inspector a draft 337; and that the inspector had stamped and signed it and faxed it back with instructions to make some changes.<sup>4</sup> The second main witness, Inspector Lutz, whose recollection of the events had originally been very limited, testified that he recalled fax communication with respondent, that he had had concerns about the installation and had raised them in a faxed response, and that he had not approved *this* installation for respondent, although he may have approved some other installation at about this same time.

The law judge discussed the testimony of respondent and Inspector Lutz and appeared to decide that resolution of the case rested solely on the credibility of the two. He determined that Mr. Lutz had "a lot at stake here because of the way they [the FAA] do business." Tr. at 307. The law judge characterized earlier statements by Mr. Lutz as suggesting that he might have

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(continued...)

unless specifically admitted.

<sup>4</sup> Respondent admitted that he had (1) cut and pasted the bottom of the form to cut off a typing mistake he had made in the date block of section 6, (2) cut and pasted a new back side of the form (allegedly changed to reflect the changes Mr. Lutz wanted), (3) copied that cut-and-pasted version to create a "good" copy, and (4) then gave that new copy to a Mr. Hill to sign as IA. Joint stipulations stated that Mr. Hill occasionally did inspections for respondent, but that he did not recall this inspection or signing this 337, and that he did not have a copy of this 337 form although he keeps copies of all 337's that he signs. Exhibit JX-1.

given this approval but could not remember, and contrasted these statements with testimony at trial that he knew he hadn't given approval on this aircraft. Tr. at 108.<sup>5</sup> Other "variations" in the inspector's testimony led the law judge to conclude that the Administrator had not met her burden of proof. Tr. at 309.

The Board is the ultimate finder of fact. Chirino v. NTSB, 849 F.2d 1525, 1530 (D.C. Cir. 1988); Singer v. FAA, 208 F.3d 555, 557 (6<sup>th</sup> Cir. 2000) ("The NTSB has plenary review authority with respect to ALJ decision making"). Although we typically defer to a law judge's credibility determinations, we do not do so when those determinations are incredible or inconsistent with the overwhelming weight of the evidence. Administrator v. Blossom, 7 NTSB 76, 77 (1990). In Administrator v. Wolf, 7 NTSB 1323, 1325 (1991), we explained that we may reverse the initial

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<sup>5</sup> Elsewhere, the law judge characterized Mr. Lutz's earlier statements as "he didn't know whether he signed off on this 337 or not. He might have, he just didn't know." Tr. at 306. We do not think this is an accurate characterization of the evidence. What Mr. Lutz actually wrote was "I recollect talking to him [respondent] on his home number that evening, but I do not recall the subject of our conversation. It is possible that I did conduct a field approval for Gary Wedding on 02/09/00, but I do not recall this particular aircraft or equipment." Exhibit R-23. Once Inspector Lutz remembered his dealing with respondent on these dates, his testimony remained consistent: he did not remember doing *this* field approval, but he might have done a different one for him around this same time. In deciding whether and whom to believe, a law judge must be extremely careful in characterizing and weighing the evidence. In this case, the law judge also made a finding of fact that respondent believed the GPS he was installing was new. We have carefully reviewed all of respondent's testimony and nowhere can we find any testimony about the condition of the GPS he installed or whether he thought it was new. We cannot determine the origin or basis for this finding and do not affirm it.

decision and affirm the Administrator's order on concluding that the law judge's factual findings could not be reconciled with the evidence. That is the case here. In relying exclusively on his credibility assessment, the law judge ignored all the forensic evidence in the record. He failed to offer any explanation for his rejection of that evidence beyond general statements to the effect that the case was not about fax machines or copiers. He also failed to offer any explanation for his apparent finding that this was the same document the parties had faxed back and forth but that, somehow, the fax headers were no longer on the document.

Parties to these proceedings, indeed all administrative proceedings, are entitled to, and law judges are required to provide, complete findings of fact and conclusions of law that allow the parties to understand the basis for the decision. In fact, this case *is* about fax machines and copiers, and scanners and computers, how they can be used to forge documents, and how a machine's characteristics can be used to identify forgeries.

The Administrator's expert witness, Mr. William Flynn, testified at great length about why the Form 337 that respondent gave the aircraft's owners so clearly showed itself to be a forgery. Tr. at 84-142. The witness testified, among other things, that the stamp approval and signature had been cut and pasted into this document, and this is visible even to a layman's eye. He explained how the stamp could have been reproduced, and noted that it had been squeezed on the horizontal axis, ending up

with narrower letters than the original stamp. He described how a signed approval stamp from another Form 337 could have been used and transferred to this document. Based on the numerous exemplars of Mr. Lutz's approvals that the expert had been provided in his examination, he showed that the size of the signature was significantly larger than Mr. Lutz's signature, and that the signature and date placement on the stamp were different from Mr. Lutz's standard placement.<sup>6</sup> He also explained that Exhibit C-2 could never have been faxed, because faxing produces a wholesale diminution in the size of the printed area to make room for the date, name, and phone number header required by law on every fax, and showed that there were no headers. In this case, there would have been a double shrinkage in size, given the testimony that the document was faxed back and forth. This shrinkage was demonstrated on the record using faxed exemplars of Form 337, and these faxed versions looked considerably different from Exhibit C-2. Further, C-2 also did not exhibit standard faxing characteristics known as "stair stepping," where the machine misses various bits and results in erratic inking when reproducing lines. See Exhibits C-6, C-7, R-16, R-27 and R-28.

Mr. Flynn had 33 years' experience as a document and signature examiner, is Board certified in this work, and respondent accepted him as an expert. Tr. at 83. Having done

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<sup>6</sup> This stamp did not even include the line "FAA Inspector" and "Date" that is located on the stamp below where the inspector signs his name and dates the document.

so, none of this forensic evidence has anything to do with credibility as between witnesses. Respondent offered no document expert of his own, and on cross-examination failed to undermine any of Mr. Flynn's conclusions. The law judge may not simply ignore this evidence, and may not arbitrarily substitute his own conclusions about what he thinks happened to the document, as he did when he concluded, directly contrary to Mr. Flynn's testimony and with no rationale, that copying "could have and must have obliterated any fax indications that normally appear on these documents." Tr. at 309.

The unrebutted evidence shows that someone cut and pasted an incomplete FAA approval stamp on a 337 form and added Mr. Lutz's signature and date. Although respondent admits cutting and pasting the bottom of the document as well as the back of it, he denies forging Mr. Lutz's signature and stamp and denies forging Mr. Hill's signature. Thus, the remaining question before us is who did? The parties (and the law judge) appeared to agree that there are only two candidates: respondent or Mr. Lutz.<sup>7</sup> Has the Administrator proven by a preponderance of the evidence that it was respondent? We think she has.

As discussed, the Administrator has demonstrated how the forgery was accomplished using a computer, a scanner, a copier, and an exemplar of the stamp and Mr. Lutz's signature.

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<sup>7</sup> The parties stipulated that Mr. Hill did not falsify the 337.

Respondent had access to all these items,<sup>8</sup> and a clear incentive to produce the approval; he had had the aircraft for 2 months, and the owners were continually calling, demanding the work's completion. If we posit that respondent sought approval and was denied it by Mr. Lutz, that Mr. Lutz would not be available for the rest of the week and that his "regular" FAA inspector was out of town, he had an incentive to falsify the document. As the Administrator points out, chances of discovery were remote.

Other evidence supports a finding that respondent played fast and loose with this paperwork. As noted, he admitted cutting and pasting the form, and we have circumstantial evidence that he forged Mr. Hill's signature. The form was not in Mr. Hill's files, although he keeps copies of all 337's he approves. The form was not in the FAA's official files for the aircraft, where it would have been sent by the inspector. The Administrator also established that the office copy of this 337 had no date entered for the flight test, while C-2 has, and C-2 has no date entered for delivery of the flight manual supplement, yet the office copy has even though no manual was ever provided. Tr. at 244-246.<sup>9</sup>

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<sup>8</sup> Counsel's attempt at the hearing to confuse matters with reference to different stamps and different inspectors was not convincing. Respondent had dealings with Inspector Lutz and would have had other 337's with Mr. Lutz's stamp and signature; indeed, Mr. Lutz could not rule out the possibility that at exactly the same time he had declined approving the GPS installation, he had approved a different 337 for respondent. Other inspectors also used the same stamp.

<sup>9</sup> Respondent also claimed that he had sent a draft manual to the  
(continued...)



Although Mr. Lutz's memory failures have been problematic, we fail to see what he would have gained from forging his own stamp, and doing that incompletely (as noted, the forgery failed to include the "FAA Inspector" and "Date," below the signature and the date; there was not enough room in the space as the stamp's language had been formatted). There was absolutely no need for him to do so, having available a stamp that he could use, nor has respondent or the law judge offered a theory that would make any sense. Respondent's argument that Mr. Lutz wanted the office to adopt another stamp format and used this instance to experiment with a different alignment is ludicrous.

Furthermore, as the Administrator points out in reply, if you accept the facts alleged by respondent that respondent faxed a draft 337 to Mr. Lutz, and Mr. Lutz faxed it back, you must conclude that this draft was not the form respondent ultimately gave to the aircraft's owners and is at issue here, because as Mr. Flynn has demonstrated, such a faxed copy not only would have two headers showing the different fax machines sent from, but would have become smaller and smaller in size each time it was faxed. Instead, the exhibit before us is actually larger than the actual form, there is plenty of room on the copy for the headers, and there is no basis in the record on which to find

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(continued...)

FAA for approval, but the FAA never received one, and respondent did not offer an office copy at trial. It is difficult to believe he would prepare a proposed manual supplement and not keep a copy in his records.

they somehow were removed.

Hart v. McLucas, 535 F.2d 516, 519 (9th Cir. 1976), establishes that, to prove intentional falsification, the Administrator must show: 1) a false representation; 2) in reference to a material fact; and 3) made with knowledge of its falsity. The placing of the stamp and forged signature on the form is a false representation, and clearly refers to a material fact -- the necessary FAA approval of the GPS installation. These actions were known to be false.

**ACCORDINGLY, IT IS ORDERED THAT:**

1. The Administrator's appeal is granted and her order of revocation is affirmed; and
2. The Administrator's motion to strike is granted.

CARMODY, Vice Chairman, and HAMMERSCHMIDT, GOGLIA, and BLACK, Members of the Board, concurred in the above opinion and order. BLAKEY, Chairman, did not participate.